

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6968 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHARVAD DHUSABHAI JODHABHAI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/12/1999

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed on 12th March 1999 by District Magistrate, Bhavnagar District, Bhavnagar, in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The detaining authority while passing the order recorded in the grounds of detention the facts regarding

involvement of the petitioner in criminal offences registered with Taleja police station, at Taleja. The authority also took into consideration statements of four witnesses whose names have not been disclosed in exercise of powers u/s 9[2] of the PASA Act. The authority exercised such powers after being subjectively satisfied that the statements made by the witnesses regarding the incident were correct and the fear expressed by the witnesses qua the petitioner is genuine. The authority took into consideration the fact that resorting to alternative less drastic remedy is not possible as the petitioner is required to be immediately detained. The authority therefore resorted to the remedy of detention under the PASA.

2. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India challenging the order of detention on various grounds, mainly on two grounds. The first ground is that the statements of witnesses were recorded on 11th March 1999 and the order was passed by the detaining authority on that very day. The second contention is that the bail application and order in respect of Cr.R. No. 17/99 and 19/99 of Talaja police station have not been supplied to the petitioner which has resulted into denying the petitioner the right of making an effective representation.

3. Ms. Datta, learned advocate for Ms.Sharma, learned advocate for the petitioner has restricted her arguments to the above grounds only. She submitted that although the list of documents given to the petitioner at the time of detention indicates that the application and orders in relation of Cr.R. No. 17/99 and 19/99 of Talaja police station were given to the detenu have not been given. She submitted further that the verification of the statements was carried out by the detaining authority on 11th March 1999 and the order was also passed on the same day. This reflects that the order is passed mechanically as the detaining authority had no time to arrive at a subjective satisfaction regarding the correctness of the facts stated by the witnesses and the fear expressed by the witnesses. She pressed into service the decision of this Court in the case of Kalidas Chandulal Kahar v/s State of Gujarat as reported in 1993[2] GLR 1659 and submitted that the petition may be allowed.

4. Mr.H.H.Patel, learned AGP has opposed this petition. He factually agreed that the verification and the order of detention came to be passed on the very day. He however tried to justify the passing of the order on

the same day, on which the statements which are relied upon by the detaining authority, were verified, by submitting that the authority, at times, is required to act fact and this quickness in action may not be taken as non-application of mind.

As regards non-supply of the documents, Mr. Patel after verifying from the official file made available to him by an officer from the department states that it is true that although the list indicates that copy of bail application and orders were supplied to the detinue, in fact they are not there in file. The bail application is not there and what is found to be an order is only communication of the order passed in the bail application from the court to the jail authority and therefore, factually, it is true that these two relevant documents have not been supplied to the detinue.

5. In view of the rival side contentions, the factual part remains undisputed that the statements of witnesses were verified on 11th March 1999 and the order of detention came to be passed on that very day i.e. on 11th March 1999. The detaining authority has based the subjective satisfaction for exercise of powers u/s 9[2] of the PASA Act and the statements of the witnesses verified by it. It may be noted that the detaining authority must have some material to arrive at a subjective satisfaction about the genuineness of the fear expressed by the witnesses other than a bare statement of the witness. Placing reliance on bare statement of the witness for exercise of powers u/s 9[2] of the PASA Act and ultimately base an order of detention thereon as one of the factors, would be very risky. A balance is required to be struck by the authority while exercising powers u/s 9[2] of the PASA Act between the right of the detinue of making an effective representation and the public interest and for considering either of the two, there has to be some material before the detaining authority which can be considered by the detaining authority. [Chandrakant N. Patel v/s State of Gujarat & ors. reported in 1994 [1] GLR 761]. In the instant case, there appears nothing except the bare statement of the two witnesses, as can be seen from the grounds of detention and no affidavit in reply is filed by the detaining authority. The Court is therefore at loss to appreciate how the detaining authority could have recorded a subjective satisfaction that the genuineness of the fear expressed by the witnesses qua the petitioner, so also the correctness of the statements qua the incidents narrated therein. That being so, the exercise of powers u/s 9[2] of the PASA Act stands

vitiated and has resulted into depriving the petitioner of making an effective representation guaranteed under the Constitution of India. The order of detention therefore would stand vitiated.

6. The petition therefore deserves to be allowed on the second ground also, namely, non-supply of the relevant documents. In fact, the detenue has not been supplied with these documents although it is stated in the list of documents supplied to the detenue at the time of detention. This is reflected from the file of the Government which has been verified by the learned AGP and conceded to. This non-supply of documents has resulted into infringement of the right of detenue of making an effective representation guaranteed by the Constitution of India.

7. On both the above grounds, the petition deserves to be allowed and the same is allowed. The impugned order of detention passed by the District Magistrate, Bhavnagar, Bhavnagar on 11th of March, 1999 in respect of the petitioner Bharwad Dhusabhai Jodhabhai, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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